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EU: Seeking Out-of-Court Settlement in Banana Dispute [redacted]

The EU would prefer to work out a compromise with Washington over the EU's banana import regime. [redacted] several EU Commission officials doubt that the Union has a strong legal case to defend the regime before the World Trade Organization (WTO).

[redacted]

In such a settlement with the United States, the Commission would try to mollify US concerns and ease the problems of EU opponents of the regime, such as Germany, by increasing the quota for banana imports from Latin American countries and by tinkering with the licensing provisions and duty levels:

- During bilateral negotiations in January, EU officials suggested liberalizing the distribution of import licenses or adjusting quota levels based on EU expansion to 15 members [redacted]
- The EU, however, probably will still resist suspending the framework agreement with Latin American banana exporters, which would risk reopening member-state debate over banana imports [redacted]

If the US takes unilateral action against the banana regime, the EU is confident that it could successfully press a WTO case, according to a variety of reporting. The EU almost certainly would try to seize the moral high ground by accusing the United States of undercutting the new, tougher dispute settlement procedures Washington fought for in the Uruguay Round.

[redacted]

- British, Spanish, and Dutch officials have questioned the ability and the propriety of the United States resorting to unilateral action just after the WTO was launched, and German officials indicate that Bonn would not try to block a Commission challenge although it sympathizes with the US complaint. [redacted]

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Keeping the Rhetoric Cool

Since the USTR's request last month for public comment on possible retaliation in the US 301 investigation of the EU banana import regime, reaction from the Commission and the member states has been muted. Although Trade Commissioner Leon Brittan defended the regime as complying with the WTO and warned against unilateral US action, there were no threats of EU counteraction during his late January visit to Washington:

[Redacted]

Despite the EU's calm response to the possibility of US 301 action, the Union has been firm about not reopening its hard-fought internal arrangement on banana imports. Brittan's public statements and other reporting reiterate the EU position that the regime is an established part of its Uruguay Round package.

- In EU-US talks on the issue in mid-January [Redacted] EU negotiators rejected US suggestions to suspend the framework agreement with Latin American banana exporters. EU officials argued that it would be too difficult to renegotiate a deal with the several countries involved and that such a move would risk exposing the import preferences for the African, Caribbean, and Pacific (ACP) countries to a new challenge. [Redacted]

Unsure About a WTO Case

Although the EU is arguing that the United States must use the WTO dispute settlement mechanism rather than unilateral action to resolve this problem, a variety of reporting indicates EU uncertainty about the strength of its case. [Redacted] UK and Spanish officials question Washington's grounds for a complaint because the United States is not a banana exporter, [Redacted] several Commission officials doubt the EU could successfully defend the banana regime in a WTO panel:

[Redacted]

EU concern about taking the banana dispute to a WTO panel almost certainly reflects its two previous losses on this issue in GATT panels:

- The new WTO dispute settlement system is still an unknown quantity and, based on the GATT panel defeats, Brussels can hardly be confident of victory. Moreover, unlike under the GATT, the EU would not be able to block adoption of a WTO panel decision. [Redacted]

[Redacted]

The EU Banana Import Regime

The current EU banana regime resulted from the inauguration of the Single Market in the beginning of 1993 which required the elimination of member-state quotas and internal trade barriers. Previously, some member states, such as the United Kingdom and France, offered protected markets for bananas from former EU colonies in the African, Caribbean, and Pacific (ACP) countries by maintaining quotas on imports of non-ACP bananas—so-called dollar bananas. Others with no colonial ties, such as Germany, imported the cheaper dollar bananas duty free.

Under the new banana regime, the EU provides duty-free access for ACP bananas and limits imports of dollar bananas through a tariff-rate quota that sharply increases the duty on dollar bananas above a set quantity.

An import licensing system also gives the bulk of the import business to several established EU import firms.

The EU justifies the regime as a legitimate method of providing aid to ACP countries that are heavily dependent on banana production. A recent World Bank study, however, branded the system as inefficient because it gives little economic benefit to the ACP producers, raises EU banana prices, and funnels most of the profit to middleman firms.

Following successful GATT challenges to the regime by Latin American exporters, the EU, after difficult negotiations, worked out a deal—the framework agreement—with Costa Rica, Colombia, Nicaragua, and Venezuela. In return for an increase in the annual quota from 2.1 million to 2.2 million tons and a 25-percent cut in the above-quota duty, these four countries agreed to withdraw their GATT complaint.

The four Latin exporters also were allowed to control issuance of export licenses for their respective shares of the quota.

After much internal EU wrangling—including Bonn's legal challenge in the European Court of Justice—the regime was finally enacted as part of the EU's Uruguay Round ratification package.

In addition, Brussels may fear a bias in favor of the United States because of the review mechanism included in the US WTO ratification legislation—which can lead to a US withdrawal from the WTO after three panel decisions are judged unfair by a US watchdog committee.

Ready To Counter US 301 Action

On the other hand, the EU is confident of its ability to successfully challenge unilateral US action on bananas. the EU is prepared to initiate a WTO complaint if the United States imposes 301 trade sanctions without first seeking a WTO panel. *The EU almost certainly believes it would seize the moral high ground by accusing the*

United States of undercutting the new, tougher dispute settlement procedure that Washington had fought for in the Uruguay Round. Moreover, the member states—even those such as Germany and the Netherlands that disagree with the banana regime—probably would back an EU protest of US unilateralism:

- [redacted] British and Spanish officials have questioned the ability—and propriety—of US use of a 301 action just after the WTO was launched; Paris almost certainly would trumpet this as evidence that Washington is unwilling to live by global trade rules.
- Dutch officials [redacted] support the US position on the banana regime but see unilateralism as counterproductive and a bad precedent at the outset of the WTO.
- Bonn has been the major opponent of the regime and still has a challenge to its legality pending before the European Court of Justice. Nonetheless, a confidential contact reports that Germany would back a Commission complaint to the WTO over any 301 sanctions. [redacted]

Settling Out of Court

Given the Commission's concern about its ability to defend the banana regime in a WTO challenge and a broad desire not to let this issue escalate into a major trade dispute—even Paris has not been pressing for a hardline stance—the EU probably hopes to work out a bilateral deal with Washington to defuse the problem:

- In his recent talks in Washington, Brittan voiced hope that a compromise could be reached, and French Foreign Minister Juppe, representing the EU presidency, downplayed the issue in talks with the Secretary of State.
- During the 19 January bilateral negotiations, EU officials suggested internal changes to the regime, such as liberalizing the distribution of licenses among importers or adjusting the quotas for the Latin American exporters based on the expansion of the EU to 15 members. [redacted]

In a compromise settlement with the United States, the Commission probably would hope to mollify US concerns and ease the problems the Germans and other member states have with the regime by increasing the amount of bananas imported from the Latin American countries. In addition, the EU may be willing to tinker at the margins with the tariff rates imposed on non-ACP bananas:

- The three new EU members previously imported the bulk of their bananas from Latin America and are sympathetic to Bonn's position. [redacted]

The EU, however, probably will continue to resist fundamental changes, such as suspending the framework agreement with the Latin American exporters, because of the risk of reopening a contentious internal debate among the member states over banana imports:

- New internal challenges to the ACP preferences for bananas could also call into question the broader trade preferences that EU members provide to support their former colonies. [redacted]